

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Craig K. Hirai
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HOUSING

March 13, 2018 at 10:00 a.m.
State Capitol, Room 423

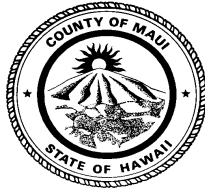
In consideration of
S.B. 2293, S.D. 2
RELATING TO AFFORDABLE HOUSING.

The HHFDC *supports the intent* of S.B. 2293, S.D. 2, which directs the HHFDC to initiate negotiations to preserve Front Street Apartments in Lahaina, Maui, as affordable rental housing. HHFDC respectfully requests an amendment to add a severability clause, as follows:

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Thank you for the opportunity to testify.

LATE



ALAN M.
ARAKAWA
MAYOR

200 South High Street
Wailuku, Maui, Hawai'i 96793-2155
Telephone (808) 270-7855
Fax (808) 270-7870
E-mail: mayors.office@mauicounty.gov

OFFICE OF THE MAYOR
Ke`ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

March 12, 2018

TESTIMONY OF ALAN M ARAKAWA
MAYOR
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEE ON HOUSING

Tuesday, March 13, 2018, 10:00 a.m.
Conference Room 423

SB2293 Relating to Affordable Housing

Honorable Tom Brower, Chair
Honorable Nadine K. Nakamura, Vice Chair
Honorable Members of the House Committee on Housing

Thank you for this opportunity to testify in **SUPPORT OF SB2293.**

The purpose of this bill is to authorize the Hawaii Housing Finance and Development Corporation (HHFDC) or any entity of the State to initiate negotiations to keep the units of the Front Street Apartments on the island of Maui affordable or to acquire the Front Street Apartments property.

On behalf of the County of Maui, I support this bill for the following reasons:

- The current residents of the apartments are comprised of below 60% & below 50% of the Area Median Income for Maui County. Some are disabled and/or elderly. They represent our most vulnerable population.
- Maui County has a dire need for additional affordable housing. The most recent Hawaii Housing Planning Study indicates a need for 12,000 housing units on Maui for 2015-2025. There are very little affordable rental options in Maui County. If the current residents were to lose their units, there are virtually no other affordable rental units for them to move to. Many could become homeless.
- Maui County has a limited number of shelters which are typically at full capacity. There is no adequate shelter space to accommodate displaced residents of the Front Street Apartment project.
- The developer entered into a 201G agreement with the county and received several exemptions based on the representation that the homes would remain in the affordable category for 51 years. I have included a portion of the minutes of the Human Services and Parks Committee 1999 meeting granting approval of this project. In this excerpt you will see that the representative of the project stated that the project must remain affordable for 51 years.

I strongly urge you to pass SB2293.

Sincerely,

Alan M. Arakawa
Mayor, County of Maui

Encl.

**HUMAN SERVICES AND PARKS COMMITTEE
Council of the County of Maui**

MINUTES

October 13, 1999

Lahaina Civic Center Social Hall, Lahaina

MR. FRAMPTON: . . . Thank you, Mr. Chairman. And I'd like to thank the Council Members and the member of . . . Members of the Council, uh, County staff for coming out to Lahaina to hold this public hearing. I'll try to keep my presentation brief. I think a number of issues have been addressed by the previous speakers. I would like to introduce the other members of the project team. You did meet Mr. Dornbush and Mr. Christian Hart from . . .the, the two partners in the Front Street Apart. . .Front Street Affordable Housing Partners. Our design team. . .we have Uwe Shultz, the Architect. . .Civil Engineer is Carl Takumi; the Traffic Engineer is Randy Okaneku; the Project Manager for Sun America is Kent Smith; and Legal Counsel is Paul Mancini. Um . . .

. . . as was previously mentioned, this is an affordable rental project--142 units. It's being developed through the Low-Income Housing Tax Credit Program. Briefly, that's a Federal program which the, in which the U. S. government allocates. . .tax credits to all 50 states. The states. . .give out the tax credits on a competitive basis every year. This project went up against a number of other projects in the State. Three projects were awarded tax credits. This is the only one on Maui that was awarded the tax credits. Part of the requirements are that they keep this project in affordable rentals for 51 years--as part of that program. Um . . .

. . . the project is intended, of course, to address a demonstrated housing need in Lahaina. . .for affordable rentals.

**COUNCIL OF THE COUNTY OF MAUI
HUMAN SERVICES AND PARKS COMMITTEE**

November 5, 1999 Committee Report No. 99-202

Mr. Frampton provided your Committee with further details relating to the Project. He noted that the 142-unit Project was being built through a Federal low-income housing tax credit program. In essence, the Federal government gives each state a number of these credits each year. He noted that there were a number of other projects in the State who competed for the credits, but only three were awarded. The Project before your Committee is the only project on Maui that received this type of tax credit. Upon receiving the credits, one of the criteria is that the Project needs to remain in affordable housing for 51 years. Another criteria is that the Project can only take place in an area with demonstrated need for affordable housing.

Council Chair
Mike White

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Stacy Crivello

Councilmembers
Alika Atay
Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura



LATE

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

January 29, 2018

TO: Honorable Will Espero, Chair
Senate Committee on Housing

FROM: Stacy Helm Crivello
Councilmember

A handwritten signature in cursive script, appearing to read "Stacy Helm Crivello".

DATE: Tuesday, January 30, 2018

SUBJECT: **SUPPORT OF SB 2293, RELATING TO AFFORDABLE HOUSING**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to direct the Hawaii Housing Finance and Development Corporation, or the appropriate state entity, to initiate negotiations to keep the units of the Front Street Apartments on the island of Maui affordable or to acquire the Front Street Apartments property unless certain conditions are met. It also appropriates funds.

I **support** this measure for the following reasons:

1. There is a critical shortage of affordable rentals and properties for sale in Maui County. The Front Street Apartments consisting of 142 units housing 250 residents was developed under the Low Income Housing Tax Credit Program for households earning less than 60% of the area median income.
2. The Front Street Apartments were expected to remain affordable to low income tenants for a period of 50 years. After fulfilling their 15 year minimum requirement to keep the property affordable, the owners exercised their option to remove the property from affordability requirements which after a 3 year grace period allows them to charge market rate rents making it unaffordable for their current tenants.
3. Act 288, Session Laws of Hawaii 2006 regarding state intervention to preserve affordable rents at Kukui Gardens affordable rental housing project set an important precedence.

For the foregoing reasons, I **support** this measure.

2018SB2293Support

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018

HOUSE OF REPRESENTATIVES
COMMITTEE ON HOUSING
Rep. Tom Brower, Chair
Rep. Nadine K. Nakamura, Vice Chair
State Capitol, Conference Room 423
Tuesday, March 13, 2018; 10:00 a.m.

**STATEMENT OF ILWU LOCAL 142 ON SB 2293, SD2
RELATING TO AFFORDABLE HOUSING**

The ILWU Local 142 supports SB 2293 SD 2, which directs the Hawaii Housing Finance and Development Corporation (HHFDC), or the appropriate state entity, to initiate negotiations to keep the units of the Front street apartments on the island of Maui affordable or to acquire the Front street apartments property unless certain conditions are met and appropriates funds.

SB 2293 SD 2 authorizes the State, whether through HHFDC or another state entity, to initiate negotiations with the leasehold fee and improvement owners, 3900 Corporation and Front Street Affordable Housing Partners Limited Partnership, or their successors. Specifically, it allows the State to negotiate extending the affordable rents for tenants through 2027 OR acquire the property, provided that 70 units are rented to households with incomes not to exceed 50% Area Median Income (AMI) as determined by the United States Department of Housing and Urban Development (HUD) and 71 units are rented to households with incomes not to exceed 60% AMI as determined by HUD.

If an agreement to either extend the affordable rents to at least 2027 or to acquire the property is not reached within a reasonable amount of time, as determined by the appropriate State entity, that state agency shall exercise its power of eminent domain to acquire the property and improvements thereon. The measure appropriates an unspecified amount for the purpose of negotiating this transaction, provided funds are matched by the County of Maui.

The ILWU shares the legislature's concern regarding the severe shortage of affordable housing across the State. We believe this bill is necessary to ensure the working class tenants, including ILWU members and their families of the Front Street Apartments, are protected.

The ILWU urges passage of SB 2293 SD 2. Thank you for the opportunity to share our views on this matter.

SB-2293-SD-2

Submitted on: 3/10/2018 7:25:28 PM

Testimony for HSG on 3/13/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Norrington	Waiola Church UCC	Support	No

Comments:

WAIOLA CHURCH, UCC
535 Waine'e Street
Lahaina, HI 96761
Office/Fax: 808.661.4349
Web: www.waiolachurch.org
Email: jen@waiolachurch.org
March 10, 2018

House Committee on Housing
Representative Tom Bower
State Capitol
Honolulu, Hawaii 9681

Dear Representative Bower and Committee Members

The Board of Trustees of Waiola Church, UCC supports the State Senate Bill 2293 as a legislature measure to maintain affordable housing at the Front Street Apartments in Lahaina, Hawaii.

As the oldest church on Maui, soon to celebrate our 195 anniversary, Waiola has had a long standing interest in the need for affordable housing, which has become even more critical in recent years. We are concerned for the current tenants facing eviction, who will be unable to find affordable options in the area, or even on the island. Our homeless population grows larger every year as low income families and individuals join their ranks...a situation that impacts us all.

Taxpayer money was lost and favors were granted to allow these units to be built - on the premise that they would remain affordable. A remedy for the IRS loophole voiding that contract needs to be found.

Please find a way to retain these units for those who call them home.

Sincerely,
Kahu Anela Rosa

and
Linda Norrington
Moderator, Board of Trustees
Waiola Church, UCC

Hawaii State House Committee On Housing
Patty Nishiyama of Na Kupuna O Maui
In support of Senate Bill 2293
March 11, 2018

Na Kupuna O Maui would like to go on record supporting affordable housing at the Front Street Apartments. We have enough homeless problems in Lahaina without adding to it by allowing the building owner to convert the buildings to market-price housing. It is important to keep what we already have and what works in this community.

As a Hawaiian culturally-based group, we support a multi-ethnic community where people get along and are sensitive to Hawaiian culture. Front Street Apartments is an example of a multi-ethnic community where you have Hawaiians who promote our culture, living with Filipino, Tongans, Samoans, Japanese, Chinese, Vietnamese, Hispanics and Caucasians. In an area that is predominantly rich white people, we need more safe multi-ethnic communities like Front Street Apartments to promote diversity.

There are many disabled people as well who benefit from living at the Apartments and its close proximity to town services, including medical clinics, the post office, and supermarkets.

I applaud the state's future plans for more housing in West Maui but sometimes, people forget that plans are just that — plans. We've seen enough state housing plans come and go to know sometimes it takes decades for them to materialize. Let's protect what we have in Lahaina.

Best regards and Malama Pono,

Aunty Patty Nishiyama,
Na Kupuna O Maui
(808) 281-5470

Testimony of Joseph Pluta,
Vice President, West Maui Taxpayers Association
In Support of Senate Bill 2293
Before State House Committee On Housing
March 11, 2018

I'm Joseph Pluta, vice president of the West Maui Taxpayers Association, representing more than 2,000 members, most of whom are property owners. In December of 2018, the Association supported the Maui County Council's Resolution, asking the Hawaii Legislature and Gov. David Ige's administration to find a way to keep affordable housing for tenants at the Front Street Apartments. The resolution passed unanimously. In January, Maui Mayor Alan Arakawa announced his support for helping to keep Front Street Apartments as affordable housing as a low-income housing. The ball is now in your court to do something.

Our organization believes that if you are going to reduce the number of homeless, the first priority is to keep what low-income housing you have in service. It makes no sense to plan for future low-income housing, if you can't protect what you have in your low-income housing inventory.

We believe the state is in a crisis of houselessness and homelessness with little or no affordable housing in West Maui, a visitor destination second only to Waikiki, and that extraordinary measures may be necessary.

We want to do the good and right thing and prevent worsening the homeless situation in West Maui. It would be absolutely terrible to do nothing and allow low-income residents to be forced out of Front Street Apartments. Our organization of taxpayers also would like to note that the agreement with Maui County and the state called for the low-income project to be in service for 50 years rather than 15 years and that while an IRS rule in 2012 allows the conversion to market-priced rentals after the 15th year, the taxpayers have invested considerably in its development and would lose up to tens of millions in public investment.

Please note that a 2012 study, done by the U.S. Department of Housing and Urban Development's Office of Policy Development and Research, recommended that Housing Finance Agencies should place their highest priority on keeping low-income developments in high rent areas because "preserving these properties as affordable housing will almost always be less costly than investing in creating new affordable developments." The study said this investment may be the most cost-effective way to encourage or maintain some amount of economic integration and diversity. While not named specifically, Front Street Apartments fits into what HUD described as a high priority area for protection. (*"Affordable Housing at the 15-year Mark," U.S. Department of Housing and Urban Development's Office of Policy Development and Research. (800) 245-2691 for help accessing information you need. Submitted by ABT Associates Inc., Bethesda, MD August, 2012.*)

In launching the Front Street Apartments project, the developer SunAmerica asked for a number of concessions, including a waiver on park contributions, parking, and underground utilities, the rezoning of five parcels

from residential to apartment, and a property tax exemption that has thus far amounted to more than \$2 million.

Additionally, the federal and state government agreed to provide up to \$1.2 million and \$360,000 respectively in annual tax credits, totaling \$15.6 million in the first 10 years.

The West Maui Taxpayers Association believes it makes sense to keep and maintain the Front Street Apartment property as a low-income apartment rental and that every effort should be made to maintain this as a housing resource.

Joseph Pluta,
Vice President,
Telephone: 661-7990

TESTIMONY OF THE FRONT STREET AFFORDABLE HOUSING PARTNERS

HEARING DATE/TIME: Tuesday, March 13, 2018
 11:00 AM
 Conference Room 423

TO: Committee on Housing

RE: Testimony in Opposition to SB2293 SD2.

Dear Chair, Vice-Chair and Committee Members:

My name is William G. Meyer, III. I have been practicing law in Honolulu since 1979. I'm counsel for the Front Street Affordable Housing Partners ("FSAHP"), the leasehold owner and original developer of the property which is the subject of SB2293 SD2 (the "Subject Property"). FSAHP strongly opposes SB2293 for the reasons set forth hereinbelow.

Background. FSAHP developed the Subject Property pursuant to IRC § 42 as an affordable housing project consisting of one hundred forty-two units (the "Project"). The Project features 19 garden apartment style residential structures, a tot lot, a basketball court and open and covered parking spaces. The Project is located on an 8.538-acre site on the block formed by Front, Wainee and Kenui Streets in the highly desirable town of Lahaina on Maui Island.

The Project was financed in part by federal and state tax credits with the vast majority of said tax credits coming from the federal government. The Subject Property involves a leasehold land interest with a long term ground lease (which expires in 2066) with 3900 Corp. as lessor. Minimum ground rent is contractually set through the remainder of the lease with incremental rent increases over time. A percentage rent is also payable in addition to the minimum ground rent. In consideration of receiving said tax credits, the Project and the Subject Property was made subject to significant use restrictions which prevented FSAHP from enjoying the highest and best value use of the Subject Property. In this regard, a Declaration of Land Use Restrictive Covenants (the "Regulatory Agreement") was imposed on the Subject Property (enforceable by the State of Hawaii, Hawaii Housing Finance and Development Corporation ("HHFDC")) which mandated that the Project be operated as an "affordable" apartment rental property reserved for families earning 50% (70 units) and 60% (71 units) or less of the area median income (AMI) as mandated in the US Department of Housing and Urban Development (HUD) for the area (Maui County) (the "Program").

Pursuant to the Program, and in accordance with IRC § 42, because FSAHP did not waive its right to apply for a Qualified Contract¹ in the Regulatory Agreement (or in any other Agreement) FSAHP was eligible to apply for a Qualified Contract after the initial 15 year compliance period. As per IRC § 42, if the allocating agency (HHFDC) cannot find a buyer during a one year period after a request for a Qualified Contract, then the restrictions for the Extended Use Period do not apply. In this case, since the Project is subject to a **15 year** compliance period, plus a **36 year** extended use period, as set forth in the

¹ A "Qualified Contract" is a *bona fide* contract to acquire (within a reasonable period of time after the contract is entered into) the non low-income portion of a building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (as specified in the agreement between the State and the owner) of the sum of: (1) the outstanding indebtedness secured by, or with respect to the building, (2) the adjusted investor equity in the building, plus (3) other capital contributions not reflected in these Amounts; reduced by cash distributions from (or available for distribution) the project. IRC Section 42(h)(6)(F). See Memorandum Re: Genesis of IRC § 42 Right to Qualified Contract Process attached hereto as Exhibit "A".

Regulatory Agreement recorded in the Bureau on August 19, 2002 as Document No. 2002-144948 FSAHP was eligible and applied for a Qualified Contract on or about August 5, 2015. HHFDC accepted the application via communication on September 22, 2015.² As a result, HHFDC had one year (until August 6, 2016) to enter into an arrangement whereby FSAHP’s interest in the Project could be acquired at a price determined by the formula set forth in IRC § 42(h)(6)(F). That calculation yielded a Qualified Contract price of \$15,395,813. When HHFDC did not find a bona fide offer at that price pursuant to the Program, the Regulatory Agreement, and IRC § 42 within the one year window period, FSAHP was, by federal law and Program rules, automatically freed from the restrictive use provisions of the Regulatory Agreement and was entitled to deal with the Property as it sees fit, subject only to a rent holding period of three years for existing tenants. There is approximately 1½ years left on the hold period. When the hold period expires, FSAHP is legally entitled to raise rents to market as FSAHP sees fit. Since August 2016, and as of January 29, 2018, 14 units have turned over and have been leased to non-restricted tenants.

No Tenants Will be Subject to Immediate Rent Increases. As noted above FSAHP may not increase rents above the Program restricted rents (annual increases in accordance with the tax regulations are permitted) for protected tenants for approximately another 1½ years. Thus there is no imminent threat to any protected tenants in the Project.

There Appears To Be Significant Misunderstanding Among Proponents of SB2293 SD1 Regarding the Origin and the Timeline Regarding the Implementation of the Qualified Contract Process. A number of individuals who have submitted testimony in support of the subject bill have maligned FSAHP by wrongfully accusing FSAHP of collaborating with others in 2012 to coerce the IRS into allowing FSAHP, and other similarly situated developers, to variously “bugout” or “dishonor” a 50-year commitment to maintain below market rental rates for their properties. Such claims are untrue. First of all, FSAHP never advocated any change to the Low Income Housing Tax Credit (“LIHTC”) Program. Second, attached hereto as Exhibit “B” is a timeline of the legislative history of the LIHTC Program. To be abundantly clear, the revisions to the program that enacted the additional 15-year use restriction period and simultaneous qualified contract process occurred in 1990 with the Revenue Reconciliation Act of 1989. The misguided testifiers may be confusing a number of Treasury Regulations that were enacted by the IRS in 2012 to clarify aspects of the qualified contract program, such as how the formula works, what “bona fide” means, etc. But it is uncontroverted that the qualified contract process has been available to all projects receiving an allocation of LIHTC after December 31, 1989. The simple reason that the Qualified Contract provision is included in the LIHTC Program and IRS code is to protect affordable housing developers in the case where the extended use period becomes overbearing on the project.

The Cost to the State/County of Maui to Acquire FSAHP’s Interest is Likely to be Between Thirty-Five and Fifty Million Dollars. Because HHFDC did not exercise its rights under the Qualified Contract during the applicable window period, the Qualified Contract price of \$15,395,813 is no longer applicable and any acquisition of FSAHP’s interest must be at the prevailing market value. Depending on the applicable valuation approach to determine the value of the property - Cap Rate, Market Sales or Replacement Cost, the following table shows a range of value that could be expected:

Cap Rate	Value	Value/Unit
4.0%	\$52,679,351	\$370,981
5.0%	\$42,143,480	\$296,785
6.0%	\$35,119,567	\$247,321

The above numbers do not include the value of the fee simple interest in the Subject Property. FSAHP does not want to divest its interest in the Subject Property and therefore will vigorously oppose

² 15 years is the period for which the property owner gets the tax credits. If, after 15 years, the owner doesn’t get back its investment (adjusted for inflation), then the owner is not subject to the extended use restrictions.

any eminent domain proceeding and in any such proceeding will seek to obtain the full market value of FSAHP's interest.

Passage of SB2293 is likely to Result in Costly and Protracted Litigation. When FSAHP entered into the Program it did so with the contractual expectation that if it fully complied with the Program and HHFDC did not exercise its rights under the Qualified Contract that the restrictions imposed on the Subject Property pursuant to the Program would expire and FSAHP could monetize its interest according to prevailing market conditions. FSAHP believes that SB2293 is an inappropriate and constitutionally infirm use of the power of eminent domain which violates FSAHP's expectancy interest and the underlying agreement between the parties. It is simply unreasonable for the state to provide public housing for a select group of residents in a highly desirable location is. Even assuming that an appellate court ultimately determines that the subject use of the eminent domain power is appropriate, the State/County of Maui will be required to pay the market price for FSAHP's interest in the Subject Property which, as noted above, is most likely between 35 and 50 million dollars or more, not including the value of the fee simple land. Such amount would be additional to legal fees incurred through protracted litigation. Given Hawaii's humongous unfunded EUTF liability and underfunded ERS obligations, as well as numerous other financial needs, it is inconceivable that the legislature would be willing to pay as much as \$60,000,000 to maintain 142 low cost rental units (at a cost of over \$422,000 each) in a high real estate value resort area.

SB2293 will have a Significant Chilling Effect upon Developers' Willingness to Enter Into Creative Solutions to Address Hawaii's Affordable Housing Needs. The subject legislation will send a message to potential low cost housing developers that the State of Hawaii cannot be trusted to stand behind contractual arrangements that it has made with affordable housing developers and that the State/County of Maui may simply invoke the power of eminent domain to, in effect, extend the restricted use of the property beyond the bargained for window period. In this regard, the subject legislation, if passed, is likely to exasperate the statewide affordable housing crunch even if it does act to keep the Subject Property in a low rental regime but at a price that is likely to be unaffordable to the State/County of Maui.

There are likely More Affordable Options Available to Address Affordable Housing Needs in the Vicinity of the Subject Property. Attached hereto collectively as Exhibit "C" find three maps which designate parcels of land (noted in red) that are currently owned by HHFDC which could be used more efficiently and economically to build affordable housing units at economies of scale which would be most beneficial to the State of Hawaii and the County of Maui.

Conclusion. For all of the above reasons, FSAHP strongly opposes the subject legislation and respectfully submits that the costs to the State and/or County of Maui to acquire FSAHP's interest in the Subject Property will result in a squandering of public resources with a minimal positive impact upon the availability of affordable housing in West Maui. In addition, the chilling effect that this legislation will have upon future affordable housing projects appears to make the proposed legislation counterproductive to the very goals it seeks to accomplish.

Respectfully Submitted,

/S/ William G. Meyer, III

On behalf of Front Street Affordable Housing Partners

William G. Meyer, III

Exhibit “A”

Memorandum Re: Genesis of IRC Section 42 Right to Qualified Contract Process

INTRODUCTION

Property owners who want to exit the low-income housing tax credit (“LIHTC”) program before the end of an affordable project’s lengthy extended use restriction period may consider using the “qualified contract” process. This process allows an owner, at any time after the 14th year of the project’s initial 15-year compliance period, to request the state housing agency to find a buyer who will continue to operate the building as a LIHTC project. If the housing agency is unable to find a qualified buyer within a 1-year period, the land use restrictions restricting rents terminate (subject to a three-year decontrol period). The owner is then free to operate the building at market rate (again, subject to a three-year decontrol period that caps rents for existing tenants and prohibits eviction except for good cause). The purpose of this memorandum is to explain the genesis of the qualified contract process and how the right to exercise the process was created.

WHAT IS A QUALIFIED CONTRACT AND WHO IS ELIGIBLE?

A qualified contract is a contract to acquire a LIHTC building for a price computed under a formula described in Section 42 of the Internal Revenue Code (“IRC”) and its implementing regulations. See *IRC Section 42(h)(6)(F)*. In other words, a qualified contract is an agreement to: (a) purchase an existing LIHTC building that has completed its initial tax credit compliance period but is still in extended use; and (b) maintain compliance for the duration of the extended use period. This allows the existing ownership to step out of the property while keeping it as affordable housing regulated by IRC Section 42.

All owners of LIHTC properties that (1) have not waived their right to apply for a qualified contract in their regulatory agreement (or other contract) and (2) have received an allocation of LIHTCs after January 1, 1990 that are subject to an additional use period extending the minimum affordability period that the owner must preserve, are eligible to apply for a qualified contract by requesting one from their state housing agency and following applicable agency rules. See *IRC Section 42(h)(6)(D)*.

HOW IS THE RIGHT TO A QUALIFIED CONTRACT CONFERRED?

The main written contract which governs the LIHTC program’s restrictions of a particular property is the recorded regulatory agreement between the owner and the state housing agency known as the “extended low-income housing commitment” in IRC Section 42. While this regulatory agreement preserves the LIHTC program’s restrictions in the long term, it is not required to specify the right of an owner to request a qualified contract. The United States Congress specifically provided for two exceptions that allow for early termination of an extended use period. These two exceptions – foreclosure and the failure to find a qualified buyer – are exhaustive and sufficient to confer rights. See *IRC 42(h)(6)(E)(i)*; H.R. Rep. 101-894 (1990).

The right to request a qualified contract is specifically set forth in IRC Section 42:

The extended use period of any building shall terminate ... (II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building. *IRC Section 42(h)(6)(E)(i)*.

Accordingly, an owner of a tax credit project has the absolute right under federal law to submit a written request to the housing credit agency to find a buyer to acquire the owner's interest in the low-income portion of the building after the 14th year of the compliance period. See *IRC 42(h)(6)(E)(i)(II)*. The right to request a qualified contract is a statutory right, meaning it is a right conferred under a law enacted by a legislature or other governing body, as opposed to judge-made precedent or a contractual right provided in a written contract.

Enacted in 1987, the LIHTC program is one of the most critical and effective federal programs for the production and preservation of affordable rental housing in the United States. Beginning in 1990, federal law required tax credit projects to remain affordable for a minimum of thirty (30) years, for a 15-year initial compliance period and a subsequent 15-year extended use period. However, that same year Congress also ensured that the changes included a qualified contract process which would provide owners an option to leave the LIHTC program after 15 years by asking their state housing agency to find a buyer, at a formula-determined price, who would agree to maintain the property under affordability restrictions.

There are many reasons that an owner may desire or need to opt out of the extended use period, particularly at Year 15, and Congress recognized this by including the right to request a qualified contract. During the first 15 years of a LIHTC property's compliance period, owners must report annual on compliance with LIHTC leasing requirements to both the Internal Revenue Service ("IRS") and state monitoring agency. After 15 years, the obligation to report to the IRS on compliance issues ends and investors are no longer at risk for tax credit recapture. Therefore, some investors look to exit the deal and new ownership entities can't sustain the affordability restrictions. At Year 15 many LIHTC buildings also require substantial new equity or debt to pay for renovation costs that are often substantial. Thus, the exit strategy may be critical to keeping LIHTC properties from becoming distressed.

Exhibit “B”

1987	LIHTC program enacted by the Tax Reform Act on 1986
1989	A task force headed by Sen. George Mitchell (D-Maine) and Sen. John Danforth (R-Mo.) issues a report on the LIHTC program with recommendations to (1) require states to have specific written allocation plans that are subject to a public hearing process; and (2) require that tax credit properties serve low-income families for 30 years.
1990	LIHTC program revised to allow properties subject to a 15-year compliance period to be subject to an additional 15-year use restriction period (but can elect to leave the program early through QC process). This was done by the Revenue Reconciliation Act of 1989 that added the “extended use period” requirement to §42(h)(6) (along with the QC escape value) and became effective with respect to projects that received an allocation of LIHTC after December 31, 1989.
2009	Housing and Economic Recovery Act of 2008 (HERA). HERA included rules specifically designed to address the negative impact previous years’ declining median incomes had on rent growth at LIHTC properties. As a result, in 2009, many existing tax credit properties may experience rent growth for the first time in several years. While the program’s goal is to maintain affordable rents for low-income families, the ongoing feasibility of LIHTC properties in many markets has surfaced as a significant issue. In some markets, rents have been flat since 2003, and in some instances, net rents have declined due to increasing utility allowances. Striking a balance between affordability for tenants and feasibility for owners was central to the new provisions in HERA relating to median incomes and rent growth.
2012	<p>In May 2012, the IRS finalized and adopted previously issued proposed regulations (Proposed Treas. Reg. §1.42-18) defining the qualified contract formula and many of the terms used therein.</p> <ul style="list-style-type: none"> • A qualified contract must be presented within one year after requested by taxpayer, which request may not be made until after the fourteenth year of the Compliance Period; • Must be a bona fide contract to acquire (within a reasonable time) the non-low-income portion of the project for fair market value and the low-income portion of the project, that is, the applicable fraction of the project specified in the extended use commitment, for the “low-income portion amount”; and • Under the final Regulations, the fair market value of the non-low-income portion of the building should reflect the existing and continuing restrictions on the building set forth in the extended use commitment. The final Regulations provide that the non-low-income portion also includes the fair market value of the land underlying the entire building, both the non-low-income portion and the low-income portion, regardless of whether the building is entirely low-income as well as items of personal property not included in Eligible Basis that will be conveyed pursuant to the qualified contract. Treas. Reg. §1.42-18(b)(3). • The low-income portion amount is an amount not less than the applicable fraction specified in the extended use commitment

multiplied by the sum of:

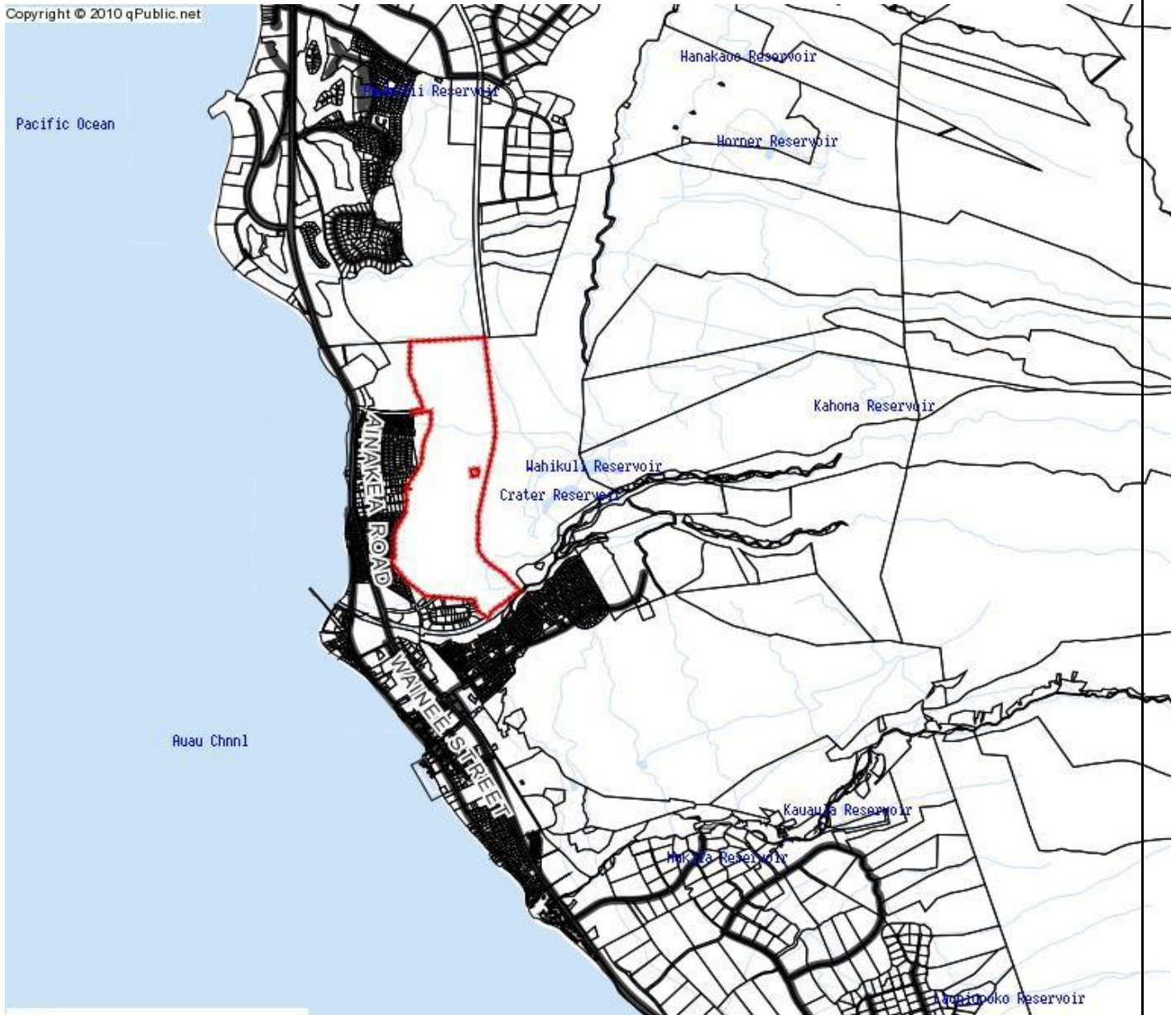
- (i) the “outstanding indebtedness” secured by, or with respect to, the building (defined in Treas. Reg. §1.42-18(c)(3)), 46
 - (ii) the “adjusted investor equity” in the building (as defined in Treas. Reg. §1.42-18(c)(4)),
 - (iii) other capital contributions (as defined in Treas. Reg. §1.42-18(c)(5)) not reflected in i. or ii. above, minus
 - (iv) the amount of cash distributions from (or available for distribution from) the building.
- Note: In response to comments concerned with project reserves distorting the low-income portion of the building, the final Regulations explicitly provide that cash available for distribution includes reserve funds so long as the reserve funds are not legally required by mortgage restrictions, regulatory agreements, or third party contractual agreements to remain with the building following the sale. Treas. Reg. §1.42-18(c)(6)(i)(B).
 - “Outstanding indebtedness” is defined as the remaining stated principal balance of any indebtedness secured by, or with respect to, the building that (i) does not exceed the amount of “qualifying building costs,” (ii) is indebtedness under general principles of Federal income tax law, and (iii) is actually paid to the lender upon the sale of the building or is assumed by the buyer as part of the sale of the building. Treas. Reg. §1.42-18(c)(3). “Qualifying building costs” means costs included in the adjusted basis of depreciable property that qualifies as residential rental property, including costs incurred after the first year of the Credit Period. Treas. Reg. §1.42-18(b)(4).
 - “Adjusted investor equity” means, with respect to any calendar year, the cash invested by owners for qualified building costs. Thus, equity paid for land, credit adjuster payments, tax credit application fees, operating deficits, and legal, syndication and accounting costs. Treas. Reg. §1.42-18(c)(4)(i). Comment: If “outstanding indebtedness” exceeds “qualified building costs,” seemingly “adjusted investor equity” must be zero. Also, to the extent that upward credit adjusters result from increases in qualified building costs, it does seem logical to exclude payment for such adjusters from adjusted investor equity.
 - (i) Adjusted investor equity is increased annually by a cost-of living adjustment based on the Consumer Price Index 47 calculated pursuant to a methodology consistent with inflation adjustments made under section 1(f) of the Code; and
 - (ii) Adjusted investor equity is taken into account only to the extent there existed an obligation to invest as of the commencement of the Credit Period. Query whether there is a sufficient “obligation” to invest if the obligation is contingent upon conditions expected to occur after the commencement of the Credit Period or representations and warranties concerning the project or subject to adjustment

if tax benefits are less than forecasted.

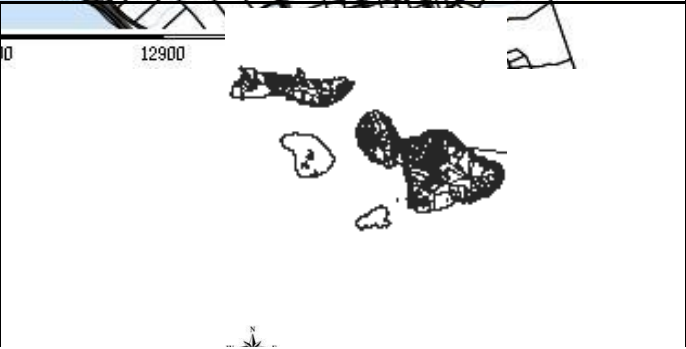
- Comment: The final regulations incorporated many comments received from practitioners. One exception is the inclusion of a fair-market-value cap for the qualified contract price. Many commentators noted that the qualified contract price might exceed the fair market value of a project under certain circumstances. Ultimately, the IRS and the Treasury concluded that they did not have authority to issue a fair-market-value cap for the low-income portion of the qualified contract amount under Section 42(h)(6)(E)(i) of the Code.
- The proposed regulations allowed the state housing agency to adjust the fair market value of the building if, after a reasonable period of time within the one-year offer of sale period, no buyer has made an offer. Proposed Regs. §1.42-18(c)(1). In response to criticisms that this discretionary adjustment would distort property valuations and purchaser demand, the IRS changed this provision to allow the state housing agency and the owner of the project to agree to adjust the fair market value of the non-low-income portion of the building during the one-year offer of sale period. Treas. Reg. §1.42-18(c)(1)(iii). However, if no agreement between state housing agency and the owner is reached, the fair market value of the non-low-income portion of the building determined at the time of the agency's offer of sale of the building to the public will remain unchanged. Moreover, the buyer and the owner, not the agency as provided in the Proposed Regulations, must adjust the amount of the low-income portion of the qualified contract formula to reflect changes in the components of the qualified contract formula such as mortgage payments which reduce outstanding indebtedness between the time of the agency's offer of sale to the general public and the building's actual sale closing date. Treas. Reg. §1.42-18(c)(1)(ii).
- Despite concern over potential abuses resulting from the vague definition of "bona fide offer," the final Regulations do not provide a more specific and restrictive definition of the term.

Exhibit "C"

Copyright © 2010 qPublic.net

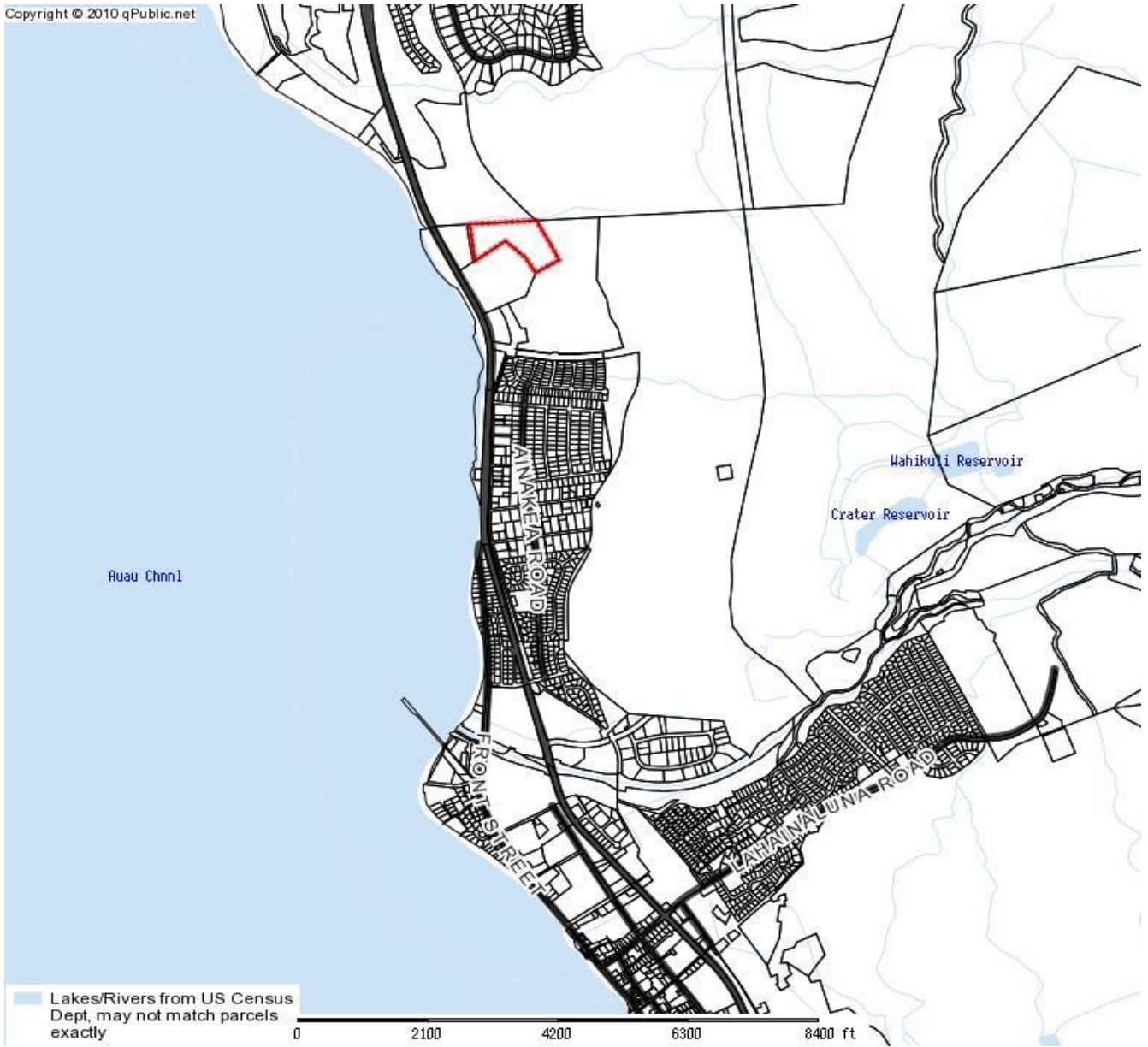


HHFDC Land - Lahaina #1			
Parcel: 450210030000 Acres: 435.77			
Name:	OUSING FINANCE & DEVELOPMENT	Land Value	\$1,124,700.00
Site:	0	Building Value	\$9,400.00
Sale:		Misc Value	\$0.00
Mail:		Just Value	\$0.00
		Assessed Value	\$1,134,100.00
		Exempt Value	\$1,134,100.00
		Taxable Value	\$0.00



The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER MAUI COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

Copyright © 2010 qPublic.net



Lakes/Rivers from US Census Dept, may not match parcels exactly

HHFDC Land - Lahaina #2

Parcel: 450210180000 Acres: 14.62

Name:	HOUSING FINANCE & DEV CORP	Land Value	\$43,900.00
Site:	0	Building Value	\$0.00
Sale:		Misc Value	\$0.00
Mail:		Just Value	\$0.00
		Assessed Value	\$43,900.00
		Exempt Value	\$43,900.00
		Taxable Value	\$0.00

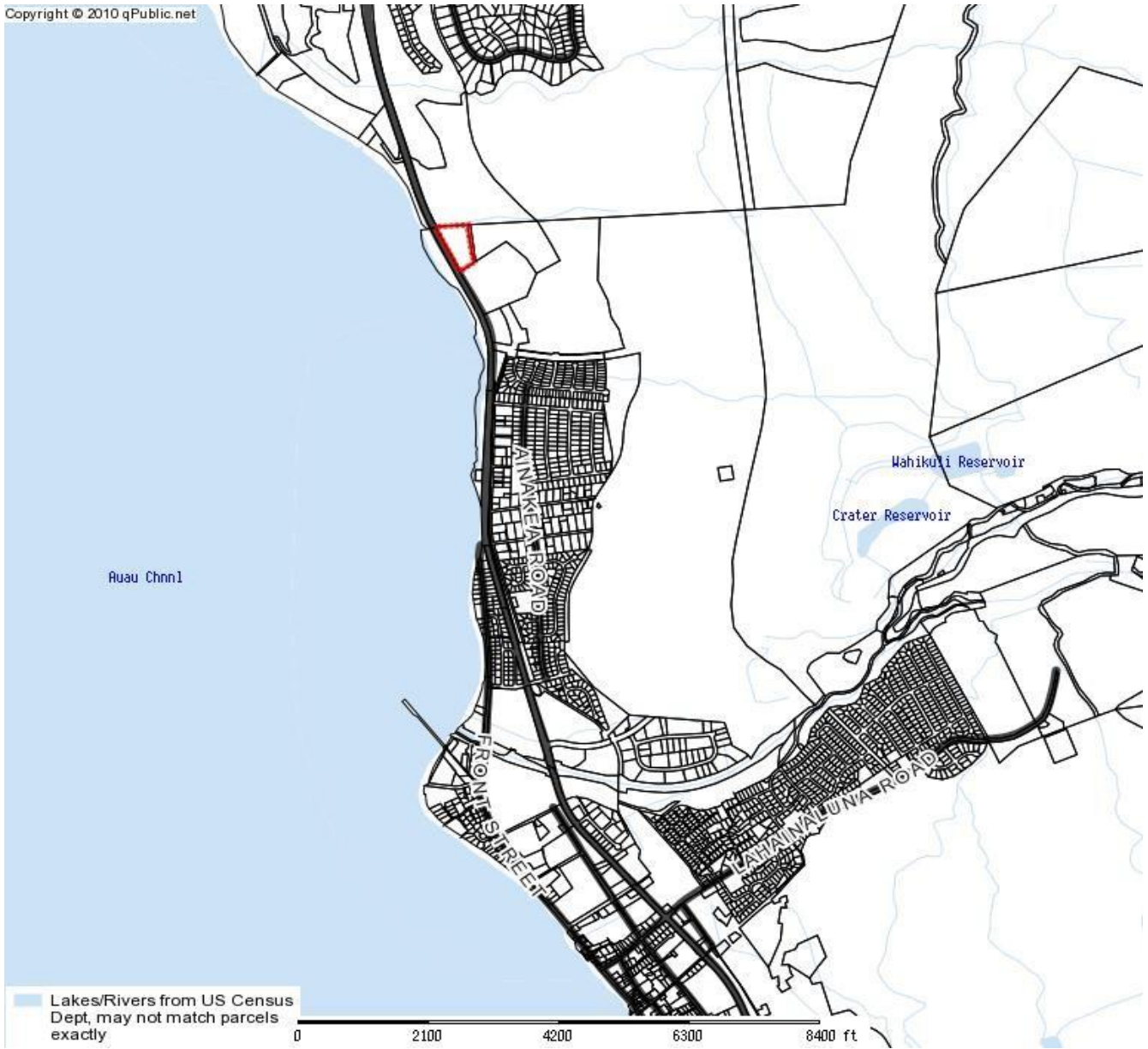


The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE

THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER MAUI COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

Date printed: 03/25/17 : 15:01:20

Copyright © 2010 qPublic.net



Lakes/Rivers from US Census Dept, may not match parcels exactly

HHFDC Land - Lahaina #3

Parcel: 450210190000 Acres: 5.52

Name:	HOUSING FINANCE & DEV CORP	Land Value	\$16,600.00
Site:	0	Building Value	\$0.00
Sale:		Misc Value	\$0.00
Mail:		Just Value	\$0.00
		Assessed Value	\$16,600.00
		Exempt Value	\$16,600.00
		Taxable Value	\$0.00



The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE

THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER MAUI COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

Date printed: 03/25/17 : 15:01:56

Testimony of Gary T. Kubota,
Volunteer Liaison, Front Street Apartment Tenants Group
In support of Senate Bill 2293
Before the State House Committee On Housing
March 13, 2018

Good morning, Committee chair Tom Brower and vice chair Nadine Nakamura. I'm Gary T. Kubota, the volunteer liaison/researcher for the Front Street Apartment Tenants Group. As a journalist, I've received national journalism awards related to consumerism and housing, including recognition from the National Association of Home Builders and the National Press Club. I'd like to provide a broad, historical view of the financial situation facing Hawaii taxpayers in looking at the development of Front Street Affordable Housing Partners.

Besides the increase in homelessness and disruption in workforce contributions of hundreds living at Front Street Apartments, Hawaii taxpayers stand to lose tens of millions in public investment already spent in developing and retaining the 142-unit Front Street Apartments.

The amount totals more than \$40 million in public investment in the past 16 years — up to \$15.6 million in state and federal tax credits, an estimated \$5 million in Maui County benefits including more than \$2 million in property tax exemptions, and more than \$20 million paid by tenants in personal rent and government rental subsidies.

What exactly has been paid by the building owner as investment during that time? According to the financial plan filed in the early 2000s by the Partners with the state, the building owners were taking out a \$17-million loan to develop the property.

So, what we're talking about is a private developer who initially spent less than \$18 million to develop the property versus a public investment of \$40 million.

The building owner Front Street Affordable Housing Partners would have state legislators think that a contract is a contract, and the terms are immutable, and that the only contract one has to look at is the contract between the Partners and the Hawaii Housing Finance and Development Corporation — an agreement signed in 2002.

But history shows that in 1999, the initial developer SunAmerica Affordable Housing Partners approached Maui County and asked for a number benefits amounting to some \$5 million, in return for developing the low-income housing project Front Street Apartments. The benefits included rezoning parcels and waivers on a requirement to contribute 1.5 acres for a public park and underground utilities. The Maui County Council passed a resolution in 1999, providing a fast-track for the development, with the lease on the land for 66 years. In view of the Partners shortening the time span to August, 1999, Maui Mayor Alan Arakawa has launched an inquiry looking into the transactions. Please note so far as I've seen, Maui County was not involved in signing the contract between the state and the Partners. The

Tenants Group feels the county should roll back benefits to the Partners and impose penalties upon the Partners, where appropriate.

It's also important to note that less than 8 years after the agreement with Maui County, Sun America was part of a coalition in 2007 lobbying the IRS to amend the rules to pave the way to improve profits for low-income housing investors and to produce 2012 final IRS rules about "Qualified Contracts" that are now being cited by the Partners in its quest to increase its financial return. In my opinion, the IRS amendments go beyond the scope of what was called for by the enabling legislation in the Omnibus Reconciliation Act of 1989. Please note the IRS made this rule change retroactive. So much for the immutability of contracts.

It's like playing a poker game and being told that deuces are wild after the hand is dealt and oh, your opponent who lobbied for the changes in the rules has the deuces. Oh yeah, and by the way, those poker hands you had eight years ago, well, the deuces were wild on those as well and the investors had the deuces, so you owe them more money.

The IRS process is flawed and has become a unilateral escape clause for low-income housing investors to cash in.

There are a growing number of low-income housing advocates nationally who recognize there is a problem. Just a few weeks ago, I received an email from Ellen Lurie Hoffman, the Federal Policy Director of the National Housing Trust who said she is working with a coalition of housing industry groups to eliminate the IRS Qualified Contract "loophole."

"Until we are able to change the statute, we were pleased that the National Council of State Housing Agencies recently adopted a 'Recommended Practice' for the Low-Income Housing Tax Credit (Housing Credit) that urges state housing agencies to require all Housing Credit applicants to waive their right to submit a qualified contract as a condition of receiving an allocation," Hoffman said.

Of course, the situation facing Front Street Apartment tenants is more immediate. The Tenants Group cannot wait for federal legislation to make a correction or a shift in national administrative policies. The tenants need help now. They need help to make things right. Thank you.

— Gary Kubota, 3450-A Keha Drive, Kihei, Hawaii 96753, telephone (808) 268-3918

(END)

SB-2293-SD-2

Submitted on: 3/12/2018 10:33:03 AM

Testimony for HSG on 3/13/2018 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

SB-2293-SD-2

Submitted on: 3/13/2018 8:38:36 AM

Testimony for HSG on 3/13/2018 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Land Use Research Foundation of Hawaii	Support	No

Comments:

The Land Use Research Foundation of Hawaii (LURF) SUPPORTS of SB 2293, SD2, relating to Affordable Housing, which directs the Hawaii Housing Finance and Development Corporation, or the appropriate state entity, to initiate negotiations to keep the units of the Front Street Apartments on the island of Maui affordable or to acquire the Front Street Apartments property unless certain conditions are met; and appropriates funds.

Thank you for the opportunity to provide comments in support of SB 2293, SD2. Please feel free to contact executive Director, David Arakawa, if there are any questions.

March 10th 2018

House Committee on Housing, in favor of SB2293

Rep. Tom Brower, Chair

State Capitol

Honolulu, Hawaii

Dear Representative Brower:

I am writing on behalf of The LahainaTown Action Committee to go on record in support of SB2293 to keep the low-income Front Street Apartments in operation.

We are at a pivotal moment in our state's history when many of our residents, our 'ohana, face grave uncertainty about where they can afford to live. The 2017 Maui County Affordable Housing Summit report details that 13,496 affordable housing units will be necessary within the next 10 years to keep pace with the rising costs of living and employment trends. If this need isn't met, I fear what becomes of our neighbors, our friends, our family. Lahaina is already working diligently to fight the rising tide of homelessness in our community, especially in highly visible commercial areas such as Lahaina Town. Preserving the affordability of the Front Street Apartments would be a great step forward in this fight - we all stand to win from this measure.

Lahaina Town is a major economic engine in Hawaii's visitor industry. Each year the more than 60 businesses of the LahainaTown Action Committee work together to put on nearly 30 events along Front Street and its surrounding areas that

successfully bring in tens of thousands of patrons who support the world class restaurants, shops and galleries that make Lahaina so special. We hope you will take our recommendation as seriously as you take our contributions to the economy of this state.

Most of Lahaina is within both the National and State Historic Districts. It was the first capital of the Hawaiian Kingdom. We pride ourselves on being the curators of this historic jewel. We must ask ourselves, what is our kuleana in this matter? How will Hawaii's future generations measure our contributions to this important issue? As leaders in our community let's strive to be the great ancestors future generations of Hawaii deserve.

Sincerely,

Sne Patel
President, LahainaTown Action Committee,
(808)-264-9950

The Hawaii House Committee On Housing
In Support of Senate Bill 2293
Testimony of Barbara Henny,
Co-Chair, Front Street Tenants Group
Feb. 25, 2018

Good morning, Committee chair Tom Brower and vice chair Nadine Nakamura. I am Barbara Henny, co-chair of the Front Street Apartment Tenants Group. The Front Street Apartment Tenants Group supports Senate Bill 2293.

The Tenants Group estimates more than \$40 million in public investment has been made to develop and maintain the 142-unit apartments in the past 16 years. We feel Front Street Apartments is an important housing resource for the state and Lahaina community and too much has been paid to let it go. We also received a letter of support from the Lahaina Town Action Committee, representing more than 60 businesses.

More than 30 churches and nonprofit groups in Maui County and Oahu have joined to support us, including ministers from Nuuanu Congregational, First Unitarian Church of Honolulu, St. Elizabeth's Episcopal Church, First Chinese Church of Christ and Emanu- El Synagogue.

We are grateful for the support of Melodie Aduja, chair of the Oahu County Committee on Legislative Matters for the Democratic Party of Hawaii and the ILWU. The Front Street Tenants Group has received letters of support from the Filipino community of Ota Camp in Waipahu and the farm community of Waiahole-Waikane Community Association in Windward Oahu. Both Ota Camp and Waiahole serve as reminders of the good that can come out the state intervention to prevent mass evictions.

The Maui County Council unanimously passed a resolution on Dec. 5, 2018 to express their support for keeping the affordable housing for the tenants at Front Street Apartments, and Mayor Alan Arakawa has announced as a legislative priority the keeping of Front Street Apartments as low-income and has launched an inquiry about the benefits given by Maui County to the investors of the building project, given their shortening of their operation from 50 years to 15 years.

We mention these tenants supporters because it is difficult sometimes for them to submit multiple testimonies to each committee during the course of a legislative session.

Please know that without state intervention, such as through Senate Bill 2293, many of the 250 people living at Front Street Apartments will be homeless and homeless in the Lahaina, an area second only to Waikiki as an urban visitor destination in the state. The nonprofit homeless resource center says it is at capacity and the wait for affordable housing is two years. As the first capital of the Hawaiian Kingdom, Lahaina Town is a National Historic Landmark and a precious resource to all taxpayers. Please note that a forthcoming letter of support for the tenants is coming from the president of the Lahaina Town Action Committee, whose more than 60 merchants are

appealing to you for help.

We, the people at Front Street Apartments, are diverse in ethnicities - Filipino, Hawaiian, Chinese, Vietnamese, Portuguese, Korean, Chamorro, Japanese, African-American, and Caucasian. About 70 to 80 percent of the adults living at Front Street Apartments work, many at more than one job. They are the maids, waitresses, dishwashers, child-care providers, substitute teachers, condominium cleaners, cashiers, store clerks, taxi cab drivers, part-time construction laborers and landscapers. The remaining 20 percent are retirees living on a fixed income and the disabled — a Gulf War veteran fighting cancer, a woman on dialysis, woman raising her Down's Syndrome son, many single parents who are survivors of spousal abuse, an elderly woman raising her Filipino great-granddaughter. The tenants are a vulnerable population, earning up to 50 to 60 percent of the median income of a Hawaii resident.

In other words, they all virtually pay rent and some rely on government subsidies to make up a portion of the rental cost. Based on the schedule of rental prices in 2001, the building owner received roughly \$1.3 million a year. In the past 16 years, that means the amount paid to the building owner is more than \$20 million in personal rent and government subsidies. We know the financial plan to develop the 142-unit complex required close to \$17-million loan.

We also know that the state and federal government gave up to \$15.6 million in tax credits, and Maui County provided close to \$5 million in benefits, including more than \$2 million in total property tax exemptions for the past 16 years.

Initially, we were told through news sources that building owner Front Street Affordable Housing Partners' spokesman Adam Dornbush said raising the rent to market levels was necessary because of the increase in ground lease rents from the landowner 3900 Corporation. But we found through our research that the ground lease prices were set in the early 2000s and that the Partners agreed to the schedule of lease rent increases in the original agreement.

The Partners broke off negotiations with the state after the 2017 legislative session and broke off negotiations earlier this year, according to state officials.

Many residents are worried sick what will happen to them if their rents are increased by more than 100 percent, perhaps even 200 percent, by the deadline of August, 2019. We cannot afford to wait any longer. We hope the passage of Senate Bill 2293 will help to bring resolution to our plight. Please stand with us.

— Barbara J. Henny 1802 Kenai Place Lahaina, HI 96761 Tel: (808) 667-9215, 283-2415

(END)



Aloha Chair Brower, Vice Chair Nakamura and members of the House Committee on Housing,

On behalf of the nearly 600 registered members of the Young Progressives Demanding Action (YPDA) – Hawai‘i, I would like to express **strong support** for SB2293 SD2. YPDA strongly believes in keeping rents low at the Front Street Apartments in Lahaina, Maui.

Why should the state of Hawai‘i get involved? Well, the state is already involved. Hawai‘i taxpayers have already paid millions of dollars to develop Front Street Apartment. There is a public investment of some \$40 million put into Front Street Apartments, including upwards of \$15.6 million in state and federal tax credits, more than \$20 million in tenants payments including renters’ money and federal rent subsidies, and an estimated \$5 million in Maui County benefits given to the building and land owner, including more than \$2 million in property tax exemptions. The building owner promised as early as 1999 it would operate the Front Street Apartments as low income for 50 years but now is trying to use a 2012 IRS loophole to convert the 142-units to market-priced rentals and evict the tenants who have been renting in good faith.

Who are these tenants? In an attempt to be competitive, Hawai‘i’s visitor industry relies on services that often result in low-paying jobs for residents. According to a Tenants Group survey, 70 to 80 percent of the tenants work at these kind of low-paying jobs, many working at more than one occupation, including maids, waitresses, cashiers, condominium cleaners, dishwashers, part-time landscapers and construction workers, part-time entertainers, taxi cab drivers, beauticians and substitute teachers. About 10 percent are retirees living on a fixed income and another 10 percent are disabled — a woman on dialysis, a veteran fighting cancer, a native Hawaiian with a severe back injury and his wife who has lupus, a grandmother taking care of her Filipino great-grandchild. This is a multi-ethnic, multi-generation community of Japanese, Chinese, Korean, Filipino, native Hawaiian, Tongan, Samoan, Chamorro, Hispanic, and Caucasians, a number of whom have lived on Maui for decades. Many are single parents with children who are trying to create a new safe life after escaping from spousal abuse.

What would happen without affordable rentals at Front Street Apartments? Many of the more than 250 tenants would become homeless in Lahaina, a tourist town second only to Waikiki as a destination. They earn 50 to 60 percent of the median income in Hawai'i, that's half of what a person normally earns. They can't afford market-price rents on Maui. Rents are going for \$1,300 for a studio and \$2,300 for a two-bedroom in West Maui. An eviction will expose Front Street Apartment children, the elderly, and disabled to unsafe conditions, add to health problems, and add to the cost of feeding and housing the homeless. Homeless shelters are at capacity and the waiting list for affordable housing is about two years, according to the Maui-based Ka Hale Ake Ola Homeless Resource Center.

What are federal officials associated with the U.S. Housing and Urban Development (HUD) saying about sites like Front Street Apartments? A study done by HUD's Office of Policy Development and Research said top priority should be placed on retaining low-income housing in high rent areas because such housing will likely cost more to replace and the presence of such low-income housing promotes diversity. Front Street Apartment fits into this description. "This investment may be the most cost-effective way to encourage or maintain some amount of economic integration and diversity."— (HUD Study 2012, Pg. 80, Affordable Housing at the 15-Year Mark, U.S. Department Of Housing and Urban Development's Office of Policy Development and Research; ABT Associates, August, 2012.)

Where does the state and Maui County stand on this issue? Discussions are still developing, as more information becomes available. The Maui County Council on Dec. 5, 2017 unanimously voted to urge state lawmakers and Gov. David Ige to keep rents affordable at Front Street Apartments. Maui elected officials including state Sen. Rosalyn Baker and state Rep. Angus McKelvey, both West Maui residents, plan to introduce enabling legislation to keep rents affordable at Front Street Apartments. According to lawmakers, the building owner Front Street Affordable Housing Partners has refused to negotiate in the past, breaking off talks after the session ended in 2017. The Front Street Apartment Tenants Group feels state lawmakers need to pass enabling legislation that keep rents affordable for our low-income tenants—whatever that solution is. We've kind of lost faith in the building owner Front Street Affordable Housing Partners. I understand that the Partners have broken off negotiations a couple of times.

Has the state ever intervened in halting an eviction and provide housing? Yes. The state helped hundreds of tenants at the multifamily Kukui Gardens in Chinatown in 2006. In the 1970s, the state built low-rent housing with an option to buy for Filipino residents of Ota Camp who relocated to Honolulu city land at Westloch in Waipahu. Also in the 1970s, Gov. George Ariyoshi successfully led a move to buy hundreds of acres of land at Waiahole and Waikane to preserve farming communities in Windward O'ahu.

How much will it cost? It's too early in the process to tell. The building owner has asserted that the appraised value was \$8.7 million in 2015 and has asked for \$15.3 million for the building based on a formula it said was developed under rules provided by the Internal Revenue Service. But no other appraisal and counter to the asking price is known to have been offered by government entities. The Tenants Group feels state and county officials should take a hard look at the figures used to prepare the appraisal and asking price by the Building owner. The Tenants Group also thinks it's important for taxpayers and government entities such as Maui County to look at rolling back benefits and imposing penalties to the building owner, in view of it breaking its promise to keep the low-income housing project in Lahaina for 50 years. Perhaps the money from the rollback along with penalties could be used toward purchasing the property.

The Building owner is claiming it is simply following IRS rules and that private entities, the state and

the county had an opportunity to buy the property when it was offered in 2015 and that opportunity has come and gone. What's your response? The Tenants Group feels it is important to note that less than 6 years after proposing a 50-year commitment for low-income housing at Front Street Apartments, SunAmerica was part of an investor coalition in 2007 that lobbied for the IRS changes paving the way to try to break the agreement. The Tenants Group believes this crisis requires extraordinary measures to save this public housing resource in Lahaina and that the state needs to intervene, given the lack of effort by investors and the building owner to negotiate in good faith.

How are tenants at Front Street Apartments doing? The more than 250 tenants are hopeful that a just and fair solution will be found. The Front Street Apartment Tenants group meets regularly at a nearby church hall to receive new information and organize to fight the eviction. Under federal rules, the Building owner is required to keep rents at low-income levels at Front Street Apartments until early August, 2019, and the Tenants Group hopes the state and county will be able to find a solution to keep rents affordable before then.

Mahalo for your support,

Will Caron
Social Justice Action Committee Chair
8083874920

SB-2293-SD-2

Submitted on: 3/10/2018 11:18:56 AM

Testimony for HSG on 3/13/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
chi guyer	Individual	Support	No

Comments:

aloha dear congress people, please save our homes. there are about 250+ of us who consist of families with school age children, working adults, seniors disabled veterans; folks who have worked all of our adult lives to contribute to the economy and peace of maui. if the complex is allowed to go to "market rate", the rents will double and many of us are working 3 and even 4 jobs just to support ourselves and families and live a beautiful life here in lahaina on maui. please support us in this endeavour. mahalo nui loa for your kind consideration and support. chi pilialoha guyer, tenant, front street apartments

Aloha from Maui.

My name is Ratna Heilscher. My family lives in Front Street Apartment. I am a single parent and working as an Educational Assistant at King Kamehameha III Elementary School. It is not easy for me, with my income, to raise my son who is a sophomore at Lahainaluna High School and to keep up with all the living expenses in Lahaina. This is the reason why I need an affordable rental house.

There is a serious shortage of affordable rentals in West Maui. We have lived in Front Street Apartment for 15 years and we really can't afford to live anywhere else.

Please keep Front Street Apartment affordable.

Thank you.

Aloha pumehana~

>>> My name is Nancy A. Silva & i have resided on W.Maui since 1986. I had lived in a rented home on Front St, Lahaina for 13 yrs. The yr i moved out, i was forced to move 4 times. When i looked @Front St. Apts. in Oct, 2001, the determining factor in my decision to move in was the fact that I was told that the rent would remain affordable for @least 51 yrs. Thus i knew i wouldn't have to continue to move in my senior yrs, especially when affordable rentals were becoming obsolete. I was assured I'd have an affordable, secure, stable home until well into my 97th yr, should i be blessed to live that long.

>>> After all these yrs of receiving tax credits, a fed. loophole has allowed FSA to back out of the original agreement, now renting 1 bdrm for \$1700. & giving those of us "grandfathered in" until Aug of 2019 to decide whether we can afford to pay the more than doubled rents, hope to find an affordable rent or move out onto the streets of W. Maui.

>>> The prospects are glum as rentals become harder to find & less & less affordable. We are a close-knit community of families, retirees, disabled, workforce & business owners like myself. We are in a conundrum & we desperately need your help! There is a critical need for affordable housing, esp. on W Maui. If state & county together could purchase FSA, it could be kept affordable. Ideally, it should remain affordable in perpetuity for future W.Maui residents. Please help us to find a way to accomplish that.

>>> Mahalo nui loa! Sincerely,

>>> Nancy A. Silva

>>> 822 Kenui Circle

>>> Lahaina, HI 96761

>>> 808-280-2291

>>> mauistar@earthlink.net

> A HUGE MAHALO to all of those that have done so much to help us accomplish our goal to keep rents affordable @FSA!!!

My daughter, Michelle Delzer, has lived in Lahaina for 15 years. She is currently a resident of the Front Street Apartments in a rent controlled apartment. She has no family in Hawaii and moved there from California when she was laid off because the economy was failing after the attacks on September 11, 2001, and her company downsized. She wanted a new start.

As you know, housing is very expensive in Maui. Michelle was employed right away, but couldn't afford a decent place to live. She rented rooms in homes, but some of them were unsafe for a single female. She bought a lock for her door. After work, she would sit in a safe place until dark and then lock herself in her room. Some renters were on drugs or others were unsavory people, whom she feared may harm her or steal the few things she owned. At this time I was extremely worried about her safety, but because I lived in California, I was unable to help her physically. I could only offer advice and counsel.

Michelle continued to look for an appropriate living space and then applied for the low income apartment. She was so excited to have a decent place to call home that she could afford. She loves her apartment and doesn't know where she would find a decent place to live at an affordable price. Michelle is very concerned and anxious about the outcome of this move to increase the rents to fair market value. She fears she may be living in a dangerous situation again.

Please help Michelle and the other residents of the Front Street Apartments to continue living in a safe, affordable environment.

Please pass Bill SB 2293

Donna Delzer

LATE

SB-2293-SD-2

Submitted on: 3/12/2018 10:37:06 AM

Testimony for HSG on 3/13/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Autumn Ness	Individual	Support	No

Comments:

LATE

SB-2293-SD-2

Submitted on: 3/12/2018 10:48:18 AM

Testimony for HSG on 3/13/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Elle Cochran	Individual	Support	No

Comments:

Aloha Committee,

As the sitting Maui County Council Member for West Maui, I strongly support this bill. The affordable units at Front Street Apartments are a vital part of our small stock of affordable rentals in West Maui. The possibility that they may become market rate units, through an unscrupulous use of an alleged loophole, is a dire one. The loss of those units will not only be disastrous for the current residents, but will be a disaster for our already stressed workforce for years to come.

Maui County does not have the resources or facilities to assist hundreds of hardworking people who will lose their homes if these go to market rate homes. There are no viable alternate housing projects in the works to replace these units, and even if there were, West Maui needs so much workforce housing, we can not afford to lose Front Street Apartments. The County of Maui, The Hawai'i State Legislature and The HHFDC must pool resources and do everything they can to keep Front Street Apartments affordable, while we continue to add affordable units to our pool of workforce housing.

I ask the Committee to amend SB2293 to include negotiations to keep Front Street Apartment affordable for the entirety of the original, agreed upon 50 years. If that negotiation is not successful, I support condemnation of the building to keep those units affordable in perpetuity.

Mahalo for you support,

Elle Cochran

Maui County Council, West Maui Seat

808 270 5504

LATE

SB-2293-SD-2

Submitted on: 3/12/2018 12:21:14 PM

Testimony for HSG on 3/13/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Guillian Malone	Individual	Support	No

Comments:

Dear Honorable Legislators:

I have lived in the Front Street Apartments since it opened. Please support us in keeping our home. Thank you very much! Guillian Malone

SB-2293-SD-2

Submitted on: 3/12/2018 12:28:26 PM

Testimony for HSG on 3/13/2018 10:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
CSpellman	Individual	Support	No

Comments:

Regarding SB 2293 SD2

March 12, 2018

Dear Honorable Legislators:

Thank you for this opportunity to submit written testimony in SUPPORT of SB2293. I am tenant at the Front Street Apartments having moved in 2011. I am permanently disabled, retired Kupuna of Chinese Hawaiian descent (HAPA) living on a fixed income. Due to Traumatic Brain Injury (TBI), Anterograde Amnesia, Degenerative Disc Disease due to a Broken Back and numerous other fractures and health issues, I can no longer work. Although I am an educated woman with a substantial work background I cannot even remember my telephone number without first looking it up due to my disability. I use a cane, walker, and wheelchair in airports. All this stress of worrying about being homeless is making my health worse. I can barely walk today.

I am in extreme duress due to the snafu that enabled the developers for the Front Street Apartments (FSA) to squirm out of this 50 year contract! They started renting these units in 2001. In 2012 they finally achieved their goal breaking the contract. They started in 2005-2006 with a movement nationwide with other investors to coerce the IRS, Dept of Treasury into breaking and dishonoring this 50 year contract by doing an Administrative change. Congress was not involved in this process so it begs the question.... When does a Director make a law that affects millions across the US negatively? They never intended on honor that 50 year contract for Affordable Housing here at the Front Street Apartments in Lahaina, Maui, HI 96761. Allegedly, this change was allowed based on financial duress and that allowed them to manipulate the Treasury. I moved in here on 2011.

Egregiously, the management and owners have never told any of us tenants about their breaking this legally binding 50 year contract that was to be solid until 2051 now to expire 8/2019. If they were honorable they would have told me prior to my moving in here 2011 that in 2012 I would be without a place to live in 2019! They began lobbying the Treasury Department just 5-6 years into their contract and knew it would happen in 2012. I found out on Thanksgiving Day 2016 from another distraught tenant who had heard about it through the grape line. In the past few months FSA's has been installing

Cherry Wood Cabinets, Marble Counters, and other opulent upgrades. Of Interest, they just stopped renovating when the Legislature started this year, 2018, and are presently taking a hiatus in order to look good for the Legislature. If they are in financial duress how can they afford to purchase brand new stoves, refrigerator along with opulent upgrades to the market rentals? I cannot even get them to put in a door that does not have huge gaps along the sides so everything including cigarette smoke (illegal), dirt, all debris comes into my apartment.

There is nowhere to go as there is NO affordable housing in Maui. There are NO HUD Rentals available either due to Short-term rentals most of which are illegal! Without HUD I am homeless. My homelessness is guaranteed as I have no alternative plans for housing. I cannot even afford to move! My body and brain are broken and now so is my heart.

I did my due diligence and homework prior to moving into the FSA's. The deck was stacked because the Owners knew it was not ever going to be a 50 year contract. Five years into this contract they started lobbying the Federal Government to break our contract. Yet, I read the contract of 50 years binding until 2051 and that helped me decide where to move and this would have been my forever home until my death. What happened to America when a contract means nothing? This is morally wrong and I suspect illegal. I urge you to strongly support SB2293 SD2 Please do not throw me aside like the developers! Last Thursday, March 8, 2019, Management took out my 6 foot tall Gardenia Shrub yet did nothing to any of the other tenants 141 other apartments. I am the only one that had their plants and shrubs removed or destroyed. This is retaliation to my being so verbal about keeping my home here at the FSA's! What is next an eviction notice? Please help us. Mahalo Nui Loa!

Respectfully,

Carmie Spellman, Tenant

Front Street Apartments

LATE

SB-2293-SD-2

Submitted on: 3/12/2018 1:52:46 PM

Testimony for HSG on 3/13/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Wayne Johnson	Individual	Support	No

Comments:

I am a 67 year old disabled veteran, and was so grateful to move to Front Street Apartments. As a Hawaii resident, I was hoping to live out my life here, and grateful to be able to more easily get to many places I need to get to. The thought of moving, or being homeless again is daunting. It is impossible to forget the scariness, and humiliation of not having a home. Even the thought of packing up at my age, losing my newfound security, leaving familiar surroundings and friends, and trying to find a safe home is unimaginable for me. I am not even sure I have another move left in me. There are working families, children, frail people, very frail people, disabled people, and elderly people at our Front Street apartments, and I literally can't imagine what will happen to some of these people if our homes are lost.

If so many of us have to leave, there might not be enough available places to live in our small town, or West Maui, especially for families. The lack of affordable housing in Hawaii is getting worse, and it is sad that so many are having to leave their families, homes, and jobs and move to the mainland just to be able to have shelter.

Mornings, I see the children heading off to school, and feel sad for them. Some of their demeanours seem to have changed since the news broke of our maybe losing our homes, and I can't help wonder what effect it might be having on them personally, and the stress their families must be under because of this. We are all so grateful to have our little community, but now people are scared. All this is why I am supporting SB 2293.

Please, for the sake of the children, working families, elderly, disabled, health challenged people, and for people getting back on their feet after unfortunate life events, help us.

Thank you so much for your concern, compassion, and help in saving our homes and community. We can't afford teams of high powered real estate attorneys, so you are our hope. Again, mahalo for your help, and our prayers are with you.

Sincerely,

Ernie Johnson

LATE

SB-2293-SD-2

Submitted on: 3/12/2018 1:57:20 PM
Testimony for HSG on 3/13/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Clapper	Individual	Support	No

Comments:

Please save the Front Street Apartments for my family and many others who rely on this housing and will be homeless without the affordable rent.

Mahalo Nui,

Clapper Ohana